IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

CRP.No. 2586 of 1999(G)

IA 431/99 in OS.155/1992 of MUNSIFF COURT, Vatakara

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REVN. PETITIONER:1st Respondent:

Komathputhiyaveettil Balakrishnan Nair,
Parvathipuram, Vatakara.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.K.LAKSHMINARAYANAN

RESPONDENTS:

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1. Jayanthi Gopalakrishnan, E.G. House, Edotiyil, Vatakara amsom and desom, Vatakara Taluk.

2. Edotiyil Madhavan Nair, 60 IIIrd Street, Secretariat, Colony,Madras.

3. Chirapurathuthazha Kuniyil Thamasikkum K.K.Kunhikrishnan Nair, S/o. Achuthan Nair, Pensioner, Vatakara Amsom and Desom.

4. Edotiyil Rungminikutty Amma,residing at Madavi Mandirathil, D/o.Ramunni Nair, Vatakara Amsom and Desom.

5. Sister/Edotiyil Lakshmikutty Amma,residing at Jayaprabha Veettil.

6. Kunhiraman, Vydiar, residing at Madhavi Mandirathil, Vatakara Amsom and Desom.

7. Branch Manager, S.B.T. Vatakara.

8. E.K.Kunhikrishnan Nair,L.J.Cross Road No.1,Mahim,Bombay-400016

BY ADV. SRI.PARTHASARATHY
SRI.R.K.MURALEEDHARAN FOR R1
SRI.A.RADHAKRISHNAN NAIR
SRI.JOBY JACOB PULICKEKUDY FOR R3
SRI.ANIL GEORGE

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Order on CMP 5319/99 in CRP 2586/99

DISMISSED.

SD/- M.N.KRISHNAN,JUDGE.

14/11/2007

M.N.Krishnan, J.

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C.R.P.No.2586 of 1999

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Dated this the 14th day of November, 2007.

ORDER

This Civil Revision Petition is preferred against the order of the Munsiff, Vadakara in I.A.No.431 of 1999 in O.S.No.155 of 1992. It was an application filed by the fifth defendant to set aside the compromise decree passed by the court on 6.2.1999. The dispute is with respect to the management of a Temple by name Bhagavathi Kottakkal. The contention of the fifth defendant before the court below is to the effect that the compromise decree was passed on the basis of a compromise arrangement dated 1.2.1999 in which she was not a party and therefore the decree passed in pursuance to the said compromise is not binding on her. Learned counsel for the revision petitioner would submit that the matter was referred to Neethimela and a draft settlement scheme was framed. It was prepared and submitted on 30.11.1996. The fifth defendant was also a party

to the proceedings.

2. When the matter came back to the civil court some dispute was raised by the first defendant regarding a tank and ultimately, a fresh compromise petition was filed, but without the junction of the fifth defendant. So far as the compromise is concerned, Order 23 of C.P.C. makes it very clear that it must be signed by all the parties. When a party does not sign the compromise, there cannot be a disposal on the basis of a compromise. Therefore, when it is proved that the fifth defendant is not a signatory, the compromise petition on the basis of which a compromise decree is passed on 1.2.1999, it has to be held that it is not binding on her. Learned counsel for the revision petitioner submits before me that he is a junior member of the tarwad and there will be difficulties if all the members jointly want to administer the affairs of the Temple.

3. When there was dispute regarding the appointment of a receiver, etc., the matter reached this court and this Court in C.R.P.No.950 of 1995 held thus: "If though necessary, the parties are also free to seek the framing of a scheme for the proper management of the affairs of the Temple and if a motion is made

in that behalf, that will also be considered by the trial court." It is subsequent to the observations of this Court that the matter was referred to Neethimela wherein the parties including the fifth defendant agreed upon for a scheme to be settled and submitted a draft scheme on the basis of which the administration of the Temple can be done. I feel that the fifth defendant may have to stick on to that scheme and in a Temple administration certainly a policy by the members of the tarwad is essential for the proper administration. But as the law stands as the compromise decree which is passed by the court does not have the junction of the fifth defendant one cannot thrust upon that decree on a person, who is not a party to the compromise. Therefore, the order impugned cannot be set aside but at the same time, a direction can be given to the court below to consider the draft scheme submitted and approved by all the parties before the Neethimela on 30.11.1996 and if minor changes here and there are necessary that may be done after hearing all the parties and when the parties accept or agree to abide by the same the court can formulate the scheme for the smooth administration of the Temple. Needless to say that court has to dispose it of on

merits after hearing all the parties. I hope that better wisdom will prevail on all parties, so that the real interest of protecting and administering a Temple can be achieved by an effective compromise and union of minds of all the members of the tarwad. The court below is directed to dispose of the matter within a time frame of four months.

Civil Revision Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

ess 14/11